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HIGH COURT OF CHHATTISGARH AT BILASPUR

W. P. (C) No. 4982 of 2007

Petitioner : Smt. Neeru Soni

Versus

Respondent : Municipal Corporation Bhilai

AND

W. P. (C) No. 4983 of 2007

Petitioner : Smt. Vandana Soni

Versus

Respondent : Municipal Corporation Bhilai

Post for order on 27th August, 2007.

Sd/-
Satish K. Agnihotri
Judge

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HIGH COURT OF CHHATTISGARH AT BILASPUR

W.P. (C) No. 4982 of 2007

Petitioner	Smt. Neeru Soni, Aged about 33 years, W/o Shri N. K. Soni, R/o MIG (C) 166, Vaishali Nagar, Bhilai, Tah. & Distt. – Durg (C.G.)
Versus	
Respondent	Municipal Corporation Bhilai, Through : Commissioner Municipal Corporation Supela, Bhilai, Tah. & Distt. – Durg

AND

W.P. (C) No. 4983 of 2007

Petitioner	Smt. Vandana Soni, Aged about 40 years, W/o Shri S. K. Soni, R/o MIG (C) 169, Vaishali Nagar, Bhilai, Tah. & Distt. – Durg (C.G.)
Versus	
Respondent	Municipal Corporation Bhilai, Through : Commissioner Municipal Corporation Supela, Bhilai, Tah. & Distt. – Durg

WRIT PETITIONS UNDER ARTICLE 226 OF THE CONSTITUTION OF INDIA

SB: Hon'ble Shri **Satish K. Agnihotri, J**

Shri V. G. Tamaskar, Advocate for the petitioners.

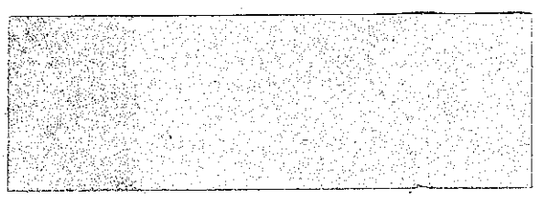
Shri H. B.Agarwal, Senior Advocate with Shri Sameer Behar, Advocate for the respondents.

O R D E R

(Passed on this 27th day of August, 2007)

1. With the consent of the parties the matter was heard finally.

2. The petitioner (Smt. Neeru Soni) in W.P.(C) No. 4982/2007 and petitioner (Smt. Vandana Soni) in W.P.(C) No. 4982/2007 impugns auction notice dated 19.7.2007 (Annexure P/5) and not the cancellation order dated 8.6.2007 of allotment of the



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shop No. F/16 and F/15, respectively, in Sheetla Commercial Complex, Bhilai, District - Durg.

3. According to learned counsel for the petitioners earlier the respondent/Corporation issued a auction notice dated 8.3.2006 (Annexure P/1) for auction of the shops at various commercial complexes, including Sheetla Commercial Complex, Bhilai. The petitioners participated in the auction proceeding and they being the highest bidders in the auction held on 27.3.2006, in the premises of the respondent/Corporation were allotted the shops No. F/16 and F/15, respectively. The petitioners, accordingly, deposited the required security amount and 1/3rd amount of the total final bid amount on 27.3.2006, itself. It was further stated that the remaining amount was also paid by them, subsequently.

4. The petitioners received the order dated 8.6.2007 (Annexure P/4) in both the petitions that the auction for allotment of the shops in dispute, held on 27.3.2006, has been cancelled by the State Government. Therefore the petitioners were directed to make application for refund of the amount of security deposit.

5. Thereafter, the respondent/Corporation issued a fresh auction notice dated 19.7.2007 (Annexure P/5) for allotment of various shops, including the shops in dispute (F/16 and F/15 at Sheetla Commercial Complex, Bhilai), which were allotted to the petitioners, in the auction held on 27.3.2006, pursuant to the auction notice dated 8.3.2006.

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6. Being aggrieved the petitioners have filed these petitions seeking a writ/direction to quash the auction notice dated 19.7.2007 (Annexure P/5).

7. Shri V. G. Tamaskar, learned counsel appearing for the petitioner submits that the earlier auction notice dated 8.3.2006 (Annexure P/1) as well as the subsequent auction notice dated 19.7.2007 (Annexure P/5) clearly provides that the Commissioner, Municipal Corporation, Bhilai is the final authority to approve the offer of the highest bidder and there is no mention of seeking any approval by the Government in the auction notices. The subsequent auction for allotment of the said shops in dispute, is not sustainable as the shops in dispute have already been allotted to the petitioners in the auction dated 27.3.2006 and there was no reason to cancel the same. Show cause notice for cancellation of the allotment of the shops was also not given to the petitioners.

8. Shri H. B. Agarwal, learned Senior Counsel, with Shri Sameer Behar, learned counsel, appearing for the respondent/Corporation filed an application (I.A.No.3) dated 21.8.2007 for dismissing the case for non-joinder of necessary party i.e. the State Government. On query that whether the respondent/Corporation intended to file any reply on merit, it was submitted by learned counsel appearing for the respondent/Corporation that the application (I.A.No.3) contains the reply also and there is no necessity of filing any return separately on merit. It was further submitted by learned counsel appearing for the respondent/Corporation that the

State Government has not approved the allotment of shops in favour of the petitioners, entailing cancellation of the allotment. Thus, the allotment of disputed shops was cancelled and new auction notice dated 19.7.2007 was issued for sale of the shops by auction. The cancellation of the allotment of the shops was done on the direction of the State Government. The Commissioner of the respondent/Corporation sent a letter dated 30th March, 2006 to the Secretary, Government of Chhattisgarh, Urban Administration and Development Department for approval of the allotment of the shops, held in the auction on 27.3.2006. The Deputy Secretary, Govt. of Chhattisgarh, Urban Administration and Development Department cancelled the allotment of the shops, including the shops in dispute, by communication dated 15th January, 2007 and further directed under communication dated 17th May, 2007 to hold fresh auction for allotment of the said shops.

9. On a specific query put to learned counsel appearing for the petitioners, whether the petitioners want to implead State of Chhattisgarh as necessary party, he vehemently opposed the application (I.A.No.3), submitting that there is no need to join the State of Chhattisgarh as necessary party, since there was no condition published in the auction notice that grant of lease would be subject to approval of the State Government. To substantiate his submissions learned counsel appearing for the petitioners cited a decision of learned Single Judge of the Madhya Pradesh High Court at Jabalpur, in the matter of

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Municipal Corporation, Satna Vs. Badri Prasad and others { 2001 (4) M.P.H.T. 387}

10. Having heard learned counsel for the parties and perusing the pleadings and documents appended thereto, it is true that Clause 4 of the general terms and conditions of the auction notice dated 8.3.2006 (Annexure P/1) provides that the Commissioner of the Corporation is the final authority to accept the bid of the parties and it does not prescribe for approval of the State Government for allotment. Clause 4 of the general terms and conditions of the auction notice dated 8.3.2006 reads as under:-

"उच्चतम बोलीदाता की राशि को स्वीकृत या अस्वीकृत करने का अधिकार आयुक्त, नगर पालिक निगम भिलाई का होगा "

11. On going through the Terms and Conditions of Allotment of Shops by Auction (Annexure P/6), it is clear that Clause 13 provides for approval of the State Government for allotment of shops. It is specifically mentioned in Clause 13 that the approval of the State Government will be sought and only after approval the highest bidder would acquire the right of patta on the land. The bidder will not have any right over the shop/building if the allotment is not approved by the Government and the bidder shall be entitled for refund of the amount without interest. No claim thereof shall be entertained. Clause 13 of the Terms and Conditions of Allotment of Shops by Auction (Annexure P/6) reads as under:-

" निगम द्वारा बोली समाप्त होने के बाद नियमानुसार राज्य शासन से स्वीकृति प्राप्त की जावेगी । स्वीकृति प्राप्त होने के बाद यह माना जावेगा की बोलीदार से

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उस संपत्ति के पट्टे का अधिकार नियमानुसार प्राप्त होगा । यदि राज्य शासन से स्वीकृति प्राप्त नहीं होती तब तक बोलीदार को संबंधित भूमि दुकान/भवन का कोई अधिकार प्राप्त नहीं होगा एवं बिना ब्याज क्षतिपूर्ति के जमा राशि प्राप्त करने का अधिकार होगा तथा कोई दावा निगम द्वारा मान्य नहीं होगा "

12. In view of the clear provision in Clause 13 of the Terms and Conditions of Allotment of Shops by Auction (Annexure P/6) it was necessary for the petitioners to implead the State Government as a party-respondent. Even otherwise, since the allotment has not been approved by the State Government and the respondent Corporation has acted on the direction of the State Government, no relief can be granted in favour of the petitioners without affording an opportunity of hearing to the State Government. The petitioners have failed to implead the State Government as necessary party.

13. The petitioners have not questioned the legality and validity of the order dated 8.6.2007, whereby the allotment of the shops by auction in favour of the petitioners has been cancelled. The process of subsequent auction notice dated 19.7.2007 cannot be faulted with.

14. The decision in the mater of Municipal Corporation, Satna (supra) passed by learned Single Judge of the High Court of Madhya Pradesh at Jabalpur is not relevant as the case is not being considered on merit.

15. In view of the foregoing, both the petitions are dismissed on the ground of non-joinder of the necessary party i.e. State of Chhattisgarh. No order as to costs.

Sd/-
Satish K. Agnihotri
Judge

Thakur